

PAYMENT IN LIEU OF TAX (PILOT) AGREEMENT

This Agreement is made as of _____, 2008 by and among PHENIX LOUISVILLE, L.P. (the “Company”), a Georgia limited partnership; LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (“Metro Government”), a consolidated local government and political subdivision of the Commonwealth of Kentucky (the “Commonwealth”); BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY (the “School District”), a political subdivision of the Commonwealth; and the DEPARTMENT OF REVENUE (the “Revenue Department”) of the Commonwealth.

Recitals

A. Pursuant to the Industrial Buildings for Cities and Counties Act, as amended, KRS 103.200 to 103.285 (the “Act”) and its Ordinance No. __, Series 2008, adopted _____, 2008, Metro Government has concurrently herewith (i) entered into a Lease and Financing Agreement of even date herewith (the “Lease”) by and among Metro Government, as lessor, the Company, as lessee, and the Bondholder identified therein; (ii) has issued under the Lease its Louisville/Jefferson County Metro Government Industrial Building Revenue Bonds, Series 2008 (The Bellamy at Louisville Project) in a principal amount not to exceed \$32,500,000 (the “Bonds”) to defray the costs of acquiring a tract of land at 1547 South 7th Street, Louisville, Kentucky, and constructing, furnishing, and equipping thereon a 192-unit residential rental apartment community to be known as The Bellamy at Louisville and the conversion of the existing building on the site for use as a parking garage to serve the residential tenants (the land, buildings, improvements, furniture, fixtures, and equipment comprising such project, as more particularly described in the Lease, being referred to as the “Project”); and (iii) accepted a Deed and a Bill of Sale from the Company conveying the Project to Metro Government.

B. As set forth in the Bond Ordinance and the Lease, Metro Government has found and determined that the Project constitutes an “industrial building” within the meaning of KRS 103.210.

C. KRS 103.285 provides that all properties, both real and personal, which a city or county may acquire to be rented or leased to an industrial concern according to KRS 103.200 to 103.280 shall be exempt from taxation to the same extent as other public property used for public purposes, as long as the property is owned by the city or county.

D. KRS 132.200(7) provides that all privately owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit under the provisions of KRS Chapter 103 shall be subject to taxation for state purposes only, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing.

E. KRS 132.020(1)(c) provides that the owner shall pay an annual ad valorem tax for state purposes at the rate of 1-1/2 cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interest and industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit under the provisions of KRS

Chapter 103, upon the prior approval of the Kentucky Economic Development Finance Authority, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing.

F. KRS 103.210(1) provides that any industrial buildings financed by bonds pursuant to KRS 103.200 to 103.285 and leased in connection with the bond financing from a tax-exempt governmental unit shall require the prior approval by the Kentucky Economic Development Finance Authority (“KEDFA”) of the reduced *ad valorem* tax for industrial buildings under KRS 132.020.

G. In order to induce the Company to undertake the acquisition, construction, furnishing, equipping, and operation of the Project, Metro Government is willing to afford to the Company an abatement, through the operation of KRS 103.285, 132.200(7), and 132.020(1)(c), of all the *ad valorem* property taxes with respect to the Project that would otherwise be payable to Metro Government. However, as a condition to the issuance of the Bonds, Metro Government has required that the Company enter into this Agreement whereby the Company agrees to make payments in lieu of taxes (“PILOT Payments”) to the Commonwealth and the School District in amounts equal to and at the same times as the *ad valorem* taxes that would otherwise be due to the Commonwealth and the School District with respect to the Project.

H. KEDFA has taken the position that it is not required under KRS 103.210(1) to review or approve any tax abatement for the Project because the Company will under this Agreement make full PILOT Payments to the Commonwealth. Accordingly, KEDFA has declined to accept any application for review and approval of the Project under KRS 103.210(1).

NOW, THEREFORE, the parties hereto agree as follows:

1. During the term of this Agreement, as defined below, the Company shall make PILOT Payments:

A. to the Commonwealth, in amounts equal to and at the same times as the *ad valorem* taxes that would be due to the Commonwealth with respect to the Project were title thereto held by the Company rather than by Metro Government, *less* the amount of any taxes paid by the Company to the Commonwealth pursuant to KRS 132.200(7) and 132.020(1)(c) with respect to the Company’s leasehold interest in the Project.

B. to the School District, in amounts equal to and at the same times as the *ad valorem* taxes that would be due to the School District with respect to the Project were title thereto held by the Company rather than by Metro Government.

2. The Revenue Department shall cause the Property Valuation Administrator and the Sheriff of Jefferson County, during the term of this Agreement, to prepare and send to the Company, at its address set forth below, assessment notices and *ad valorem* real property tax bills for the Project in the same manner and at the same times as such notices and bills would be prepared and sent by such officials with respect to the Project were title thereto held by the

Company rather than by Metro Government. Such bills shall show the assessed value of the Project, the property tax rates, and the resulting amounts of PILOT Payments due hereunder from time to time by the Company to the Commonwealth and the School District.

3. Metro Government acknowledges that, in consideration of the Company's undertaking to acquire, construct, furnish, equip, and operate the Project pursuant to the Lease, Metro Government has agreed to issue the Bonds and to forego any PILOT Payments to Metro Government with respect to the Project during the term of this Agreement.

4. As used herein, the "term of this Agreement" means the first calendar year commencing after the date of this Agreement to and including the calendar year during which the Bonds are retired, the Lease terminates, and Metro Government no longer holds title to the Project.

5. Nothing in this Agreement shall preclude the Company from contesting as provided by law the assessed value of the Project or any portion thereof.

6. All bills, notices, and other communications hereunder shall be sent to the Company at the following address:

Phenix Louisville, L.P.
646B Kentucky Street
Scottsdale, GA 30079

Attention: General Partner

or to such other address, or to the attention of such other person, as the Company designates in writing to the other parties hereto.

7. All references herein to the Company shall include its successors and assigns as lessee under the Lease.

8. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth.

9. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PHENIX LOUISVILLE, L.P.,
a Georgia limited partnership

By: Phenix Louisville GP, LLC,
a Georgia limited liability company
Its sole General Partner

By: _____
Its Manager

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT

By: _____
Mayor

BOARD OF EDUCATION OF JEFFERSON
COUNTY, KENTUCKY

By: _____
Superintendent

DEPARTMENT OF REVENUE OF THE
COMMONWEALTH OF KENTUCKY

By: _____

Title: _____